

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ALBERTO J. RAMIREZ,

Petitioner,

v.

No. 1:23-cv-0232-KWR-SCY

ATTORNEY GENERAL OF THE  
STATE OF NEW MEXICO, *et al*,

Respondents.

**ORDER OF VOLUNTARY DISMISSAL**

**THIS MATTER** comes before the Court on Petitioner's *pro se* Motions to Dismiss Without Prejudice (Docs. 3, 4) (Motions). Petitioner seeks to dismiss his 28 U.S.C. § 2254 habeas petition so that he can return to the New Mexico Supreme Court (NMSC) and exhaust certain remedies. Petitioner also suggests the original § 2254 pleading was filed by his brother, even though Petitioner is not ready to proceed. To the extent Petitioner seeks voluntary dismissal of this habeas case, the Motions will be **GRANTED**. Fed. R. Civ. P. 41(a)(1)(A) permits movants to dismiss an action without prejudice "before the opposing party serves either an answer or a motion for summary judgment." Rule 41(a)(1)(A)(i). *See also Janssen v. Harris*, 321 F.3d 998, 1000 (10th Cir. 2003) (The rule grants "an absolute right to dismiss without prejudice"). This case is still in the screening phase, and Respondents have not filed any pleading. The Court will therefore dismiss this case without prejudice to refiling at a later time.

To the extent Petitioner makes argument about his pending certiorari appeal with the NMSC; seeks legal advice on exhaustion; or raises issues regarding his conditions of confinement, those matters will not be adjudicated in this case. The "Court [cannot] ... give legal advice," *Kruskal v. Martinez*, 859 Fed. App'x 336, 338 (10th Cir. 2021), and any arguments relating to the

pending certiorari proceeding must be directed to the NMSC. As to any alleged denial of access to courts or inhumane treatment in prison, Petitioner must pursue those claims in a separate civil rights action.

**IT IS ORDERED** that Petitioner's Motions to Dismiss Without Prejudice (**Docs. 3, 4**) are **GRANTED**; the Petition for Writ of Habeas Corpus (**Doc. 1**) is **DISMISSED WITHOUT PREJUDICE**; and the Court will enter a separate judgment closing this civil habeas case.

**IT IS SO ORDERED.**



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KEA W. RIGGS  
UNITED STATES DISTRICT JUDGE